

Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: William A. Lewis, et al. - Overtime Pay for
Travel to Training

File: B-230405

Date: June 29, 1990

DIGEST

Employees who traveled away from their official duty stations on Sunday and returned on Friday evening in order to take training courses at a private institution may be allowed overtime pay or compensatory time for their travel. The government had no control over the content or scheduling of the courses, and, thus, the travel resulted from an event which could not be scheduled or controlled administratively. See 5 U.S.C. § 5542(b)(2)(B)(iv) (1988) and Federal Personnel Manual Supplement 990-2, Book 550, SI-3b. Gerald C. Holst, B-222700, Oct. 17, 1986, overruled.

DECISION

This decision is in response to a request from Charles R. Coffee, Acting Chief, Accounting and Finance Division, Defense Logistics Agency (DLA), concerning whether certain DLA employees are entitled to receive overtime pay while in a travel status outside of regular working hours to attend training.^{1/} For the following reasons, we conclude that they are so entitled.

BACKGROUND

At various periods of time after October 12, 1984, Mr. William A. Lewis and other employees from California offices of DLA were assigned to take training courses at the Maine Maritime Academy, Castine, Maine.^{2/} The Academy is a private institution and the government has no control over the content or the scheduling of the courses offered. The

^{1/} Reference DLA-CFF.

^{2/} The other named employees are Ms. Aimee Stover, Mr. Kenneth Battle, Ms. Anne MacDougall and Mr. Dennis DiPong. Mr. Lewis is no longer employed by DLA.

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agency did have ample notice of the course schedules and control over the employees' attendance at these courses.

The employees were required to travel from California on Sunday in order to arrive at the Maine Maritime Academy on Sunday evening and start their training courses on Monday morning. The courses were completed by Friday afternoon and the employees traveled back to California on Friday evening or early Saturday morning. The employees were thus required to travel away from their official duty stations outside of their regularly scheduled administrative workweek. Since their General Schedule positions are not covered by the Fair Labor Standards Act, their entitlement to overtime pay, if any, depends on whether the time spent traveling away from their official duty stations is considered hours of employment under the provisions of 5 U.S.C. § 5542(b)(2)(B)(iv) (1988).

OPINION

Section 5542(b)(2)(B)(iv) of title 5, United States Code (1988), provides:

"(b) For the purpose of this subchapter--

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(B) the travel . . . (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such an event to his or her official duty station."

The Federal Personnel Manual Supplement provision interpreting this statute in the context of travel to training courses provides in part as follows:

"Unless the training course is conducted by a private institution for the benefit of the Government, when a training course is conducted by an institution outside the Government, it is an event which cannot be scheduled or controlled administratively and required travel outside the employee's regular work hours to attend the

training course will be considered hours of employment. However, when a training course is conducted by an institution for the benefit of the Government, it is to be assumed that the Government can control the scheduling of the course and therefore the event is under administrative control of the Government."^{3/}

In the instant case, the training courses were offered by a private institution which any person interested in acquiring certain skills could attend and were not subject to government scheduling or control. Thus, these training courses were not conducted for the benefit of the government and must be considered to be events which could not be scheduled or controlled administratively. It follows that, under the provisions of 5 U.S.C. § 5542(b)(2)(B)(iv) as interpreted by the Federal Personnel Manual Supplement, quoted above, the employees are entitled to overtime compensation.^{4/}

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Our prior decisions generally have articulated a two-pronged test in applying 5 U.S.C. § 5542(b)(2)(B)(iv) under which entitlement to overtime depends on both (1) the existence of an event that cannot be scheduled or controlled administratively and (2) an immediate official necessity in connection with the event requiring that travel be performed outside the employee's regular hours. See, e.g., Brown and Schacht, B-229373 and B-232443, Apr. 4, 1990; John B. Schepman, 60 Comp. Gen. 681 (1981); Mark Burstein, B-172671, Mar. 8, 1977. Treating these two elements separately is useful in most cases arising under 5 U.S.C. § 5542(b)(2)(B)(iv). However, this approach has limited utility in situations like the instant case where an employee must be present at an event that has been scheduled for a particular time without any control on the part of the government. In these situations, the scheduling of the event itself supplies the immediate official necessity,

3/ FPM Supp. 990-2, Book 550, subchapter S1-3b (Case No. 5) (Inst. 70, Sept. 26, 1983).

4/ Since these employees are General Schedule employees, the 1984 amendment made to 5 U.S.C. § 5542(b)(2)(B)(iv) by § 101(c) of Title I of Pub. L. No. 98-473, 98 Stat. 1874 (October 12, 1984), also covers the return travel from their training courses.

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depending on the timing, for travel outside regular duty hours in order to accommodate that schedule. 5/

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5/ All but one of our prior decisions applying the two-pronged test under 5 U.S.C. § 5542(b)(2)(B)(iv) to scheduled events, such as training courses or meetings, involve cases in which the government had some control over the scheduling. The one exception is Gerald C. Holst, B-222700, Oct. 17, 1986, which we now overrule.